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*Attorneys for Certain Victims  
From the Camp Fire and  
2017 North Bay Fires*

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**In re:**

**PG&E CORPORATION**

**-and-**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors**

☐ Affects PG&E Corporation

☐ Affects Pacific Gas and Electric  
Company

☒ Affects both Debtors

*\* All papers shall be filed in the Lead  
Case, No. 19-3088 (DM)*

Bankruptcy Case  
No.: 19-30088 (DM)

Chapter 11  
(Lead Case) (Jointly Administered)

**REPLY IN SUPPORT OF MOTION  
TO EXPUNGE CLASS PROOF OF  
CLAIM FILED BY GER  
HOSPITALITY, LLC**

Hon. Dennis Montali

Date: April 29, 2020  
Time: 10:00 a.m. (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102

## I. INTRODUCTION

In its Opposition [Docket No. 6716], GER Hospitality, LLC (“GER”) does not dispute the reasons why class treatment is inappropriate for its Class Proof of Claim.<sup>1</sup> Those reasons, set forth in the Motion to Expunge<sup>2</sup>, demonstrate that class treatment is inappropriate because GER’s putative class has not been certified pre-petition, the putative class members have all received actual or constructive notice, the class claim would adversely impact the administration of the estate, and GER cannot meet the requirements of Federal Rule of Civil Procedure 23.

Instead, GER asserts that fire victims (“Claimants”), on whose behalf the undersigned attorneys filed the Motion to Expunge, lack standing and that the motion is premature. Neither assertion is correct.

As GER acknowledges in its Opposition, creditors may make objections to other creditors’ claims and that “any party in interest may object to a claim.” Claimants, some of whom fall within the class definition in GER’s class action complaint, have done just so by moving this Court to expunge its Class Proof of Claim for the sake of orderly administration and preservation of the funds that will eventually be available to wildfire victims such as Claimants.

Claimants’ Motion to Expunge is also not premature. Claimants need not wait until a motion for certification or request for application of Bankruptcy Rule 7023 is filed. GER cites no authority for its argument premised on prematurity.

Accordingly, Claimants seek an order expunging GER’s Class Proof of Claim to the extent brought on a class basis.<sup>3</sup>

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<sup>1</sup> Amended Proof of Claim no. 59725.

<sup>2</sup> As may be amended by Docket No. 6675.

<sup>3</sup> Claimants do not seek total expungement of GER’s class proof of claim and only seek an order expunging its proof of claim to the extent brought on a class basis.

## II. ARGUMENT

### A. Claimants, as Creditors, Have Standing to Object to GER's Class Proof of Claim

Claimants filed the Motion to Expunge on March 23, 2020, and at that time the Court had not appointed a trustee or claims administrator. Seeing that GER's Class Proof of Claim threatened to disrupt the administration of the estate and diminish funds available to wildfire victims who have made claims, Claimants took the initiative to seek an order expunging the Class Proof of Claim and remove such a threat. While the trustee has the duty to examine proofs of claims and object to improper claims, the Advisory Committee notes to Bankruptcy Rule 3007 expressly state, and GER acknowledges, that "any party in interest may object to a claim" pursuant to section 502 of the U.S. Code. *See also In re Hashim*, 188 B.R. 633, 642 (Bkrtcy.D.Ariz. 1995) ("Creditors can object to proofs of claim," *citing* Section 11 U.S. Code section 502); *In re Williamson*, 43 B.R. 813, 820 (Bkrtcy.D.Utah. 1984) (declaring that a "creditor claiming an interest in the property of the estate...has the right to object to the validity of [] other claims, pursuant to Section 502(a) of the Code...").

In a footnote, GER suggests that the attorneys challenging its Class Proof of Claim "do not appear to represent any putative class members." GER's class is defined as, "[a]ll business entities located in Sonoma, Napa, Mendocino, Lake, and Solano Counties who suffered economic losses due to the wild fires..." To be clear, the attorneys challenging its Class Proof of Claim represent certain businesses located in Napa, *e.g.*, B Cellars, Patland Estate Vineyards, and Hagafen Cellars, which would fall within GER's class definition.

For that reason and the clear language of Section 502 of the Code, Claimants have standing to object to GER's Class Proof of Claim.

### B. Claimants' Motion to Expunge is Not Premature

GER argues that Claimants' Motion is premature, but it is not so. Claimants

1 filed its Motion before GER took any action so that the Court, trustee, or claims  
2 administrator would be spared the time-consuming process of determining whether  
3 class treatment is appropriate. Such a process would involve an adjudication of a  
4 request for application of Bankruptcy Rule 7023 to its class proof of claim – a  
5 necessary step for class treatment – and the ensuing analysis of GER’s putative class  
6 action complaint. Claimants’ Motion to Expunge requests an order that would avoid  
7 this.

8 GER also claims that the Motion to Expunge is premature because GER has not  
9 yet filed a motion for certification or requested application of Bankruptcy Rule 7023  
10 to its Class Proof of Claim. That is not the standard. It is appropriate for a motion to  
11 expunge to be brought before either request is made in bankruptcy. *See, e.g., In re*  
12 *Sequoia Senior Solutions, Inc.*, 2017 WL 2533345, at \*2 (Bkrcty.N.D.Cal., 2017)  
13 (debtor filed motion to expunge in response to class proof of claim and before  
14 claimant moved for application of Bankruptcy Rule 7023). And it is similarly  
15 appropriate in a non-bankruptcy forum for a party to initially move for an order  
16 denying class certification. *See Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 655  
17 n.1 (D. Nev. 2009) (“[A]lthough the plaintiff typically moves for class certification,  
18 the parties do not dispute that a defendant can move to deny class certification before  
19 a plaintiff moves for certification. Rule 23 does not preclude this.”)

### 20 **C. Expungement of GER’s Class Proof of Claim is Warranted**

21 GER does not dispute any of the reasons set forth in the Motion to Expunge for  
22 why class treatment of its proof of claim is inappropriate. GER does not dispute that  
23 the three *Musicland* factors all counsel against class treatment: its putative class was  
24 not certified before the petition; the robust notice procedures have been largely  
25 successful in providing notice of the bar dates to wildfire victims such as GER’s  
26 putative class members; and class treatment would negatively impact the  
27 administration of the estate. The Opposition also does not dispute that it cannot satisfy  
28 the requirements of Federal Rules of Civil Procedure section 23.

1 **III. CONCLUSION**

2 For the above-stated reasons and those in the Motion to Expunge, Claimants  
3 respectfully request that this Court enter an order expunging GER's Class Proof of  
4 Claim to the extent brought on a class basis.

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6 Dated: April 22, 2020

Respectfully submitted,

7  
8 **CASEY GERRY SCHENK**  
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By: /s/ James M. Davis

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